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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 403

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, VIRGIL ROGERS and WILLARD RICHARDS,
Petitioners,

vs.

PANAMA STEAMSHIP COMPANY, LTD., a corporation, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioners' Reply Brief

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Respondents argue that petitioners' picketing somehow interfered with the internal economy of the *S.S. Nikolos*, a vessel of foreign registry and that the Norris-LaGuardia Act therefore does not apply. Petitioners urge that the dispute is not one internal to the economy of the ship, but is a dispute which in no way involves relations between the crew and their employers and a Norris-LaGuardia labor dispute is established.

In this reply brief, petitioners will argue first that the dispute between respondents and the petitioner labor union involves a clash of economic interests very like those in-

volved in other cases before this court in which the Norris-LaGuardia Act was held applicable and that no interference with the internal economy of the *S.S. Nikolos* is involved.

The respondents' argument as to the Norris-LaGuardia Act's application therefore must fail as it is based on a false premise that the dispute concerns the internal economy of a foreign ship.

Even though the Norris-LaGuardia Act were not applicable, nevertheless, the district court lacked jurisdiction to grant an injunction for petitioners' alleged maritime tort in peacefully picketing the *S.S. Nikolos*. We have pointed out in our opening brief (pages 24-27) that the decision of this court in *Romero v. International Terminal Operating Company* 358 U.S. 354 precludes assertion of federal question jurisdiction under 28 U.S.C. Sec. 1331. Respondents now assert two new theories of jurisdiction, neither of which is legally sound.

Respondents ask this court to reverse the long-established rule that suit for an injunction is not within the admiralty jurisdiction in order to permit an injunction in a labor dispute. The case cited by respondents to support this argument in fact warrants a contrary conclusion.

Finally we will argue that petitioners by peacefully picketing committed no tort in violation of the treaty with Liberia and jurisdiction therefore may not be predicated on 28 U.S.C. Sec. 1350.

THE PRESENT DISPUTE IS A LABOR DISPUTE WITHIN THE MEANING OF THE NORRIS-LaGUARDIA ACT AND DOES NOT INVOLVE THE INTERNAL ECONOMY OF A FOREIGN VESSEL.

If the Norris-LaGuardia Act is applicable an injunction is prohibited and there is no need to consider respondents' argument that an admiralty court may entertain an equi-

table suit for injunction. Petitioners will therefore first discuss the application of the Norris-LaGuardia Act and the question of whether or not the present dispute concerns the internal economy of a foreign vessel. Respondents' counsel observes: "If an American corporation were in the place of respondents there would still be no labor dispute in this case, because the employment is aboard a foreign flag vessel only transiently in our waters on an international voyage" (Respondents' Brief 14). Respondents' counsel makes the following further observation without citation of authority: "Contrary to petitioners' repeated (Pet. Br. 17, 23) but unsupported statement, an American shipowner could obtain an injunction under the facts of this record if it stood in the place of respondents" (Respondents' Brief 49, 50).

Respondents' brief says that "There (in *Benz*) as here the American unions were picketing for the purpose of forcing a change in those articles and the re-employment of the foreign crew on terms and conditions comparable to those on American flag vessels" (Respondents' Brief 34-35); that application of the Norris-LaGuardia Act to the present dispute would constitute an "extension of our labor laws to foreign flag vessels" (Respondents' Brief 36); that the present dispute involves "internal economies of foreign vessels" (Respondents' Brief 36-37); that "Petitioners would force a change in that contract" (Respondents' Brief 38); that the dispute herein is one "involving employment aboard foreign ships or in foreign commerce generally" (Respondents' Brief 39); that application of the Norris-LaGuardia Act to the present dispute would "make the Act applicable to disputes over conditions of employment aboard a foreign flag vessel" (Respondents Brief 42).

The contention, therefore, is that the nature of the dispute between the parties is decisive. However, there is no

claim that the picketing union was seeking to represent the foreign crew or to bargain on their behalf or to seek any change in the internal affairs of the *S.S. Nikolos*. (R. 14, 28, Respondents' Brief 6.)

This court in *Benz*[1] based its decision on the fact that the dispute there was "between nationals of other countries operating ships under foreign laws;" (353 U.S. 143), the dispute "arose on a foreign vessel" and was "between a foreign employer and a foreign crew * * *" (353 U.S. 142). The unions in the *Benz* case picketed on behalf of the members of the crew of the *S.S. Riviera* in an effort to reach a satisfactory adjustment of a dispute between the crew and the foreign employer.

In our case the Marine Cooks & Stewards Union picketed on behalf of its own members whose economic interests were injured by the entry of the *S.S. Nikolos* into the salt trade between Mexico and Tacoma, Washington. The trial court found:

"XVI

Plaintiffs or some of them have entered into and are seeking other contracts of affreightment covering the carriage of like cargoes from Mexican ports to United States ports in the Puget Sound area and to Hooker Electrochemical dock in Tacoma aboard the *S.S. Nikolos* and/or other similarly registered and manned vessels, owned, operated or chartered by plaintiffs, or some of them" (R. 35)

"XXIV

As a result of the engagement in this trade by the plaintiffs in vessels of foreign registry; vessels of American registry and operated and manned under

1. *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957).

> contracts with the defendant unions have lost or will lose such business with resultant loss of employment to members of defendant labor organizations." (R. 36-7)

The picketing protested the economic invasion of the *Nikolos* and the petitioners in picketing were not seeking to change wages, hours or working conditions on the *S.S. Nikolos* (R. 25-28; R. 75). The picket sign carried first said only "Picket Boat" (R. 59) and then a new sign was used stating "AFL-CIO Seamen Protest Loss of Their Livelihood to Foreign Flag Ships with Substandard Wages or Substandard Conditions" (R. 60).

Respondents point to no decision holding that peaceful picketing of a foreign vessel constitutes interference with the internal order or economy of the vessel. The dispute between the parties here does not concern any claimed interference by the petitioning labor union with relations between the master and the crew or with respect to any matter involving the internal discipline of the ship. The dispute involved a clash of economic interests between the petitioners and the respondents. Petitioners by their peaceful picketing gave publicity to the effect of respondents' conduct upon the members of petitioner who protested "loss of their livelihood." By their peaceful picketing petitioners asked those in sympathy with their cause not to assist the respondents in their efforts to establish a foreign ship employing a foreign crew in a trade formerly employing an American ship and petitioners' members. The trial court observed (R. 119):

> "The resentment of the defendants and their members at what they regard as unfair competition, as it were, and their efforts to remove it, are quite understandable and certainly not without strongly sympathetic points."

Nor does the present dispute involve interference with the "internal economy" of the *Nikolos* as that phrase has been judicially construed.

The Consular Treaty with Liberia provides some guidance as to what is meant by the internal order or economy of foreign vessels. It provides:

> "A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided, however, that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws." Convention Respecting Consular Officers with Liberia, October 7, 1938, Art. X, part 4, 54 Stat. 1751, T.S. No. 957.

In *Wildenhus's Case*[1], this court had occasion to consider the reasons for not interfering with the internal economy of a foreign vessel. This court said:

> "It was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local govern-

1. *Wildenhus's Case*, 120 U.S. 1, 12 (1887).

ment to be dealt with by the authorities of the nation to which the vessel belonged . . ."

Wildenhus's Case, 120 U.S. 1, 12 (1887) (dictum);
Cunard Steamship Co. v. Mellon, 262 U.S. 100, 122 et seq.;
U.S. v. Flores, 289 U.S. 137, 158.

Controversies as thus defined seem limited to matters between the captain and the crew, minor crimes on ship board, suits by seamen, wage claims and the like. *The Flag of Convenience Fleet*, 69 Yale L.J. 499, 504-513 (January 1960). The present dispute does not involve the wages, hours or conditions of the S.S. *Nikolos* except as conditions which existed when the respondent Seatankers, Inc., chartered the S.S. *Nikolos* from respondent Panama Steamship Company.

The present dispute involves the vessel, her owners, her operators and charterers, but petitioners did not interfere nor seek to interfere in any way with the internal economy of the vessel. There is no need, therefore, to decide whether or not the Norris-LaGuardia Act would apply if the dispute here did involve interference with the internal economy of the S.S. *Nikolos*. That problem existed in the *Benz* case but does not exist here.

The Liberian Treaty requires no contrary result. That Treaty (p. 8 of this brief) provides that Liberian vessels shall "in all respects, and unconditionally be accorded the *same* treatment as" vessels of the United States. Since all American flag ships and their American owners are subject to the American law, this article does not bar application of the Norris-LaGuardia Act to the present dispute. If anything the treaty might be interpreted to grant the *same* remedies to Liberians as are granted to Americans, including the right to file charges under the Taft-Hartley Act for unlawful conduct.

We pointed out in our opening brief that the present dispute falls within the definition of a labor dispute, as this court has interpreted that term in the Norris-LaGuardia Act (Petitioners' Brief 10 to 24). We respectfully refer this court to that discussion, and particularly to *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91 discussed on pages 14 and 15; and to *Aetna Freight Line, Inc. v. Clayton*, 228 Fed. (2d) 384; cert denied (1956), 351 U.S. 950.

PETITIONERS BY PEACEFULLY PICKETING COMMITTED NO TORT IN VIOLATION OF THE TREATY WITH LIBERIA

Respondents on pages 2 and 3 of their brief quote in part the treaty between the United States and Liberia. The following additional paragraphs of that treaty are relevant:

"Article I

. . . . . .

The Nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The Nationals of each High Contracting Party shall receive within the territory of the other, upon submitting to conditions imposed upon its Nationals, the most constant protection and security for their persons and property and shall enjoy in this respect that degree of inspection that is required by national law." (54 Stat. 1740)

. . . . . .

"Article XIV

The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within

> the territorial waters and harbors of the other party, in all respects and unconditionally be accorded the same treatment as the vessels and cargoes of that party." (54 Stat. 1746).

In Article I it is agreed that Liberian Nationals be granted freedom of access to the courts of the United States "on conforming to the local laws" and in Article XIV that Liberian Nationals are entitled to protection and security for their persons and property "upon submitting to conditions imposed upon" American Nationals. The treaty therefore does no more than promise equality of treatment for Liberian Nationals and owners of Liberian ships who enter American ports.

There is no allegation in the complaint nor any finding by the lower courts that any act of petitioners violated the Liberian Treaty. The respondents' brief does not point to any evidence or finding that petitioners' conduct violated the Liberian Treaty. The argument seems to be that application of the Norris-LaGuardia Act would result in respondents being unable to secure an injunction and therefore application of the Norris-LaGuardia Act to this labor dispute between Liberian corporations and an American union will violate the Liberian Treaty.

The treaty in essence forbids governmental action which is discriminatory against foreign shipping but does not guarantee that foreign ships are entitled to come into American ports without any interference from American citizens, or on more favorable terms than are afforded American ships. Foreign shipowners must take American law (including limitations on the jurisdiction of American courts) as they find it, and as it applies to American shipowners.

THE UNITED STATES DISTRICT COURTS LACK JURISDICTION TO GRANT AN INJUNCTION FOR AN ALLEGED MARITIME TORT WHETHER THE ACTION BE ON THE LAW SIDE OR THE ADMIRALTY SIDE.

Respondents argue that the present complaint to enjoin an alleged maritime tort must be allowed either as an action on the law side under 28 U.S.C. Sec. 1331, or on the admiralty side. If the action is on the law side respondents must distinguish this court's decision in *Romero v. International Terminal Operating Co.*, 358 U.S. 354; If on the admiralty side, respondents ask this court to overrule the long-established rule that admiralty does not exercise equitable jurisdiction.

In our main brief, we deal at some length with this point (Petitioners' Opening Brief, pages 24-27). In their reply respondents argue that the *Romero* decision could not be intended to apply to bar the present complaint for an injunction because, if applicable, respondents are left with only a claim for damages. What respondents argue is that any claim for a maritime tort may be the basis for an injunction proceeding on the law side because an admiralty court without the injunctive remedy is inadequate to deal with the task of protecting maritime rights rooted in federal law.

To support their claim that admiralty courts may grant injunctions, respondents rely upon *Swift & Co. Packers v. Compania Colombiana Del Caribe*, 339 U.S. 684 (1950). That case carefully distinguishes between an independent equitable claim pertaining to maritime property and a clearly maritime claim in which incidental equitable relief is sought. The court states that the denial of any equitable relief would be proper if the libelants in the *Swift & Co.* case had gone into admiralty by way of a creditor's bill to set aside the sale of a ship as a fraudulent transfer (339 U.S. 690 n).

The court notes that admiralty "cannot entertain a suit to reform a release from liability executed under a mutual mistake merely because it pertains to a maritime claim; * * *". (339 U.S. 692) The court likewise noted that admiralty will not entertain a suit for an accounting as such but when a cause of action over which admiralty has independent jurisdiction is before the court, an accounting may be ordered if necessary to the complete adjustment of the rights over which admiralty has jurisdiction (339 U.S. 692-3). The court says (page 693):

> "In each of these cases a holding that admiralty must stay its hands as to a matter intrinsically non-maritime but necessary to the complete adjustment of rights over which admiralty has independent jurisdiction would have seriously impaired the discharge by admiralty of the task which belongs to it."

The present proceeding is an independent equitable proceeding in which plaintiffs seek an injunction as the principal element of their prayer for relief. The respondents seek an injunction and ask for damages in addition. The main thrust of the complaint is in equity.

The statements of this court and the statements in the admiralty treatises referred to on pages 21 and 22 of respondents' brief are clear and unequivocal. Except in limitation of liability proceedings, admiralty courts do not issue injunctions.

Nor is there any need to seek a loophole through *Romero* in order to overcome indirectly the rule that admiralty courts do not issue injunctions. If a federal district court on the law side had jurisdiction to issue an injunction forbidding an alleged maritime tort, there would be no need for this court to have referred to the lack of power of the admiralty court to issue injunctions. If action for an in-

junction could be brought on the law side on the maritime tort, the same result could be accomplished as though admiralty could grant an injunction.

CONCLUSION

For the reasons stated in our opening brief and in this reply it is respectfully submitted that the judgment of the court below should be reversed and the cause remanded to the District Court with instructions to vacate the temporary injunction and dismiss the action.

Respectfully submitted,

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